

SENATE AMENDMENTS

2nd Printing

By: Hinojosa, Raymond, Muñoz, Jr., Guillen

H.B. No. 3193

A BILL TO BE ENTITLED

AN ACT

relating to the licensing of a home and community support services agency; increasing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 142.006(b), Health and Safety Code, is amended to read as follows:

(b) A license issued under this chapter expires three [~~two~~] years after the date of issuance. The executive commissioner by rule may adopt a system under which licenses expire on various dates during the three-year [~~two-year~~] period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal. The department may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The department may issue a temporary license to an applicant for an initial license.

SECTION 2. Section 142.010(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner by rule shall set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this

1 chapter, except that the fees may not be less than \$600 or more than
2 \$2,625 [~~\$2,000~~] for a license to provide home health, hospice,
3 habilitation, or personal assistance services.

4 SECTION 3. As soon as practicable after the effective date
5 of this Act, the executive commissioner of the Health and Human
6 Services Commission shall adopt rules necessary to implement the
7 changes in law made by this Act.

8 SECTION 4. This Act takes effect September 1, 2019.

ADOPTED

By: Hinojosa/Johnson

MAY 21 2019

____.B. No. _____

Substitute the following for _____ B. No. _____:

Secretary of the Senate

By: Charles Perry

C.S.H.B. No. 3193

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the licensing of, the executive commissioner of the
3 Health and Human Services Commission's duties with respect to, and
4 the administrative penalties for home and community support
5 services agencies.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Sections 142.006(a), (b), and (c), Health and
8 Safety Code, are amended to read as follows:

9 (a) The commission [~~department~~] shall issue a home and
10 community support services agency license to provide home health,
11 hospice, habilitation, or personal assistance services for each
12 place of business to an applicant if:

13 (1) the applicant:

14 (A) qualifies for the license to provide the type
15 of service that is to be offered by the applicant;

16 (B) submits an application and license fee as
17 required by this chapter; and

18 (C) complies with all applicable licensing
19 standards required or adopted under this chapter; and

20 (2) any controlling person with respect to the
21 applicant complies with all applicable licensing standards
22 required or adopted under this chapter.

23 (b) A license issued under this chapter expires three [~~two~~]
24 years after the date of issuance. The executive commissioner by

1 rule shall [~~may~~] adopt a system under which licenses expire on
2 staggered [~~various~~] dates during each three-year [~~the two-year~~]
3 period. The commission shall prorate the license fee as
4 appropriate if the expiration date of a license changes as a result
5 of this subsection [~~For the year in which a license expiration date~~
6 ~~is changed, the department shall prorate the license fee on a~~
7 ~~monthly basis. Each license holder shall pay only that portion of~~
8 ~~the license fee allocable to the number of months for which the~~
9 ~~license is valid. A license holder shall pay the total license~~
10 ~~renewal fee at the time of renewal. The department may issue an~~
11 ~~initial license for a shorter term to conform expiration dates for a~~
12 ~~locality or an applicant. The department may issue a temporary~~
13 ~~license to an applicant for an initial license].~~

14 (c) The commission [~~department~~] may find that a home and
15 community support services agency has satisfied the requirements
16 for licensing if the agency is accredited by an accreditation
17 organization, such as The Joint Commission or the Community Health
18 Accreditation Program, and the commission [~~department~~] finds that
19 the accreditation organization has standards that meet or exceed
20 the requirements for licensing under this chapter. A license fee is
21 required of the home and community support services agency at the
22 time of a license application.

23 SECTION 2. Sections 142.010(a) and (b), Health and Safety
24 Code, are amended to read as follows:

25 (a) The executive commissioner by rule shall set license
26 fees for home and community support services agencies in amounts
27 that are reasonable to meet the costs of administering this

1 chapter, except that the fees may not be less than \$600 or more than
2 \$2,625 [~~\$2,000~~] for a license to provide home health, hospice,
3 habilitation, or personal assistance services.

4 (b) The executive commissioner shall consider the size of
5 the home and community support services agency, the number of
6 clients served, the number of services provided, and the necessity
7 for review of other accreditation documentation in determining the
8 amount collected by the commission [~~department~~] for initial and
9 renewal license fees.

10 SECTION 3. Section 142.017, Health and Safety Code, is
11 amended by amending Subsections (a), (b), (c), (e), (i), and (j) and
12 adding Subsections (k) and (l) to read as follows:

13 (a) The commission [~~department~~] may assess an
14 administrative penalty against a person who violates:

15 (1) this chapter or a rule adopted under this chapter;
16 or

17 (2) Section 102.001, Occupations Code, if the
18 violation relates to the provision of home health, hospice,
19 habilitation, or personal assistance services.

20 (b) The penalty shall be not less than \$100 or more than
21 \$1,000 for each violation, except that the penalty shall be not less
22 than \$100 or more than \$5,000 for each violation that results in
23 actual harm or that constitutes an immediate threat to the health or
24 safety of a client. Each day of a violation that occurs before the
25 day on which the person receives written notice of the violation
26 from the commission [~~department~~] does not constitute a separate
27 violation and shall be considered to be one violation. Each day of

1 a continuing violation that occurs after the day on which the person
2 receives written notice of the violation from the commission
3 [~~department~~] constitutes a separate violation.

4 (c) The executive commissioner by rule shall specify each
5 violation for which the commission [~~department~~] may assess an
6 administrative penalty. In determining which violations warrant
7 penalties, the commission [~~department~~] shall consider:

8 (1) the seriousness of the violation, including the
9 nature, circumstances, extent, and gravity of the violation and the
10 hazard of the violation to the health or safety of clients; and

11 (2) whether the affected home and community support
12 services agency had identified the violation as a part of its
13 internal quality assurance process and had made appropriate
14 progress on correction.

15 (e) Except as provided by Subsection (j), the executive
16 commissioner by rule shall provide the home and community support
17 services agency with a reasonable period of time following the
18 first day of a violation to correct the violation before the
19 commission [~~department~~] assesses an administrative penalty if a
20 plan of correction has been implemented.

21 (i) The commission [~~department~~] may not assess an
22 administrative penalty against a state agency.

23 (j) The commission [~~department~~] may assess an
24 administrative penalty without providing a reasonable period of
25 time to a home and community support services [~~the~~] agency to
26 correct the violation if the violation:

27 (1) represents a pattern of violation that results in

1 actual [~~serious~~] harm [~~or death~~];

2 (2) is widespread in scope and results in actual harm;

3 (3) is widespread in scope and constitutes a potential

4 for actual harm;

5 (4) [~~2~~] constitutes an immediate [~~a serious~~] threat

6 to the health or safety of a client;

7 (5) [~~3~~] substantially limits the agency's capacity

8 to provide care;

9 (6) [~~4~~] is a violation in which a person:

10 (A) makes a false statement, that the person

11 knows or should know is false, of a material fact:

12 (i) on an application for issuance or

13 renewal of a license or in an attachment to the application; or

14 (ii) with respect to a matter under

15 investigation by the commission [~~department~~];

16 (B) refuses to allow a representative of the

17 commission [~~department~~] to inspect a book, record, or file required

18 to be maintained by an agency;

19 (C) wilfully interferes with the work of a

20 representative of the commission [~~department~~] or the enforcement of

21 this chapter;

22 (D) wilfully interferes with a representative of

23 the commission [~~department~~] preserving evidence of a violation of

24 this chapter or a rule, standard, or order adopted or license issued

25 under this chapter;

26 (E) fails to pay a penalty assessed by the

27 commission [~~department~~] under this chapter not later than the 10th

1 day after the date the assessment of the penalty becomes final; or

2 (F) fails to submit:

3 (i) a plan of correction not later than the
4 10th day after the date the person receives a statement of licensing
5 violations; or

6 (ii) an acceptable plan of correction not
7 later than the 30th day after the date the person receives
8 notification from the commission [~~department~~] that the previously
9 submitted plan of correction is not acceptable;

10 (7) [~~45~~] is a violation of Section 142.0145; or

11 (8) [~~46~~] involves the rights of the elderly under
12 Chapter 102, Human Resources Code.

13 (k) The commission shall develop and use a system to record
14 and track the scope and severity of each violation of this chapter
15 or a rule adopted under this chapter for the purpose of assessing an
16 administrative penalty for the violation or taking some other
17 enforcement action against the appropriate home and community
18 support services agency to deter future violations. The system:

19 (1) must be comparable to the system used by the
20 Centers for Medicare and Medicaid Services to categorize the scope
21 and severity of violations for nursing homes; and

22 (2) may be modified, as appropriate, to reflect
23 changes in industry practice or changes made to the system used by
24 the Centers for Medicare and Medicaid Services.

25 (1) In this section:

26 (1) "Actual harm" means a negative outcome that
27 compromises a client's physical, mental, or emotional well-being.

1 (2) "Immediate threat to the health or safety of a
2 client" means a situation that causes, or is likely to cause,
3 serious injury, harm, or impairment to or the death of a client.

4 (3) "Pattern of violation" means repeated, but not
5 pervasive, failures of a home and community support services agency
6 to comply with this chapter or a rule adopted under this chapter
7 that:

8 (A) result in a violation; and

9 (B) are found throughout the services provided by
10 the agency or that affect or involve the same clients or agency
11 employees or volunteers.

12 (4) "Widespread in scope" means a violation of this
13 chapter or a rule adopted under this chapter that:

14 (A) is pervasive throughout the services
15 provided by the home and community support services agency; or

16 (B) represents a systemic failure by the home and
17 community support services agency that affects or has the potential
18 to affect a large portion of or all of the clients of the agency.

19 SECTION 4. As soon as practicable after the effective date
20 of this Act and after consulting with appropriate interested
21 persons, the executive commissioner of the Health and Human
22 Services Commission shall adopt rules necessary to implement the
23 changes in law made by this Act.

24 SECTION 5. The changes in law made by this Act apply only to
25 actions taken by the Health and Human Services Commission and
26 license holders under Chapter 142, Health and Safety Code, on or
27 after the effective date of this Act. An action taken before the

1 effective date of this Act is governed by the law in effect at that
2 time, and the former law is continued in effect for that purpose.

3 SECTION 6. This Act takes effect September 1, 2019.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 20, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB3193 by Hinojosa (Relating to the licensing of, the executive commissioner of the Health and Human Services Commission's duties with respect to, and the administrative penalties for home and community support services agencies.), **Committee Report 2nd House, Substituted**

The fiscal implications of the bill cannot be determined at this time, as the number and severity of future violations subject to the bill's provisions is unknown.

The bill would change the home and community support services agency licensure period from two to three years. According to the Health and Human Services Commission (HHSC), this would require the agency to make modifications to the Texas Unified Licensure Information Portal. LBB analysis indicates that these activities could be completed with existing resources.

The bill would increase the maximum license fee for home and community support services agencies from \$2,000 to \$2,625. The Comptroller of Public Accounts (CPA) indicates that the increase in the maximum license fee in combination with the increase in the license term would not have a significant fiscal impact on revenue.

The bill would increase the maximum penalty that could be assessed for violations of Chapter 142 of the Health and Safety Code to \$5,000 in certain circumstances. According to the CPA, because the number and severity of future violations is unknown, the amount of any increased penalty amounts cannot be determined.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission, 304 Comptroller of Public Accounts

LBB Staff: WP, AKi, JQ, MNa

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 5, 2019

TO: Honorable James B. Frank, Chair, House Committee on Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB3193** by Hinojosa (Relating to the licensing of a home and community support services agency; increasing fees.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would change the home and community support services agency licensure period from two to three years. According to the Health and Human Services Commission (HHSC), this would require the agency to make modifications to the Texas Unified Licensure Information Portal. LBB analysis indicates that these activities could be completed with existing resources.

The bill would increase the maximum license fee for home and community support services agencies from \$2,000 to \$2,625. The Comptroller of Public Accounts indicates that the increase in the maximum license fee in combination with the increase in the license term would not have a significant fiscal impact on revenue.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 529 Health and Human Services Commission

LBB Staff: WP, AKi, JQ, MNa

